

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Larry L. Harris,

NO. C 08-02552 JW

Plaintiff,

**ORDER DENYING APPLICATION TO  
PROCEED IN FORMA PAUPERIS**

v.

Wells Fargo Bank,

Defendant.

Pursuant to 28 U.S.C. § 1915(a), Larry Harris (“Plaintiff”) has filed an Application to Proceed in Forma Pauperis based on his declaration of poverty. (Docket Item No. 2.)

Title 28 U.S.C. Section 1915(a)(1) provides that “Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” Section 1915 further states that “such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915.

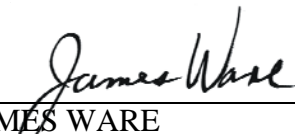
Although the Ninth Circuit has not directly addressed whether non- prisoners may bring suit in forma pauperis under the 1996 amendment to 1915(a), other circuits have found that this right still exists. Floyd v. United States Postal Serv., 105 F.3d 274, 275-77 (6th Cir. 1997) (overruled on other grounds); Schagene v. U.S., 37 Fed. Cl. 661, 662 (Fed. Cl. 1997); see also Leonard v. Lacy, 88 F.3d

1 181, 183 (2d Cir. 1996). In addition, the Supreme Court has held that an in forma pauperis applicant  
2 need not be “absolutely destitute to enjoy the benefit of the statute.” Adkins v. E.I. Du Pont De  
3 Nemours & Co., 335 U.S. 331, 339 (1948). It is sufficient if an applicant provides an affidavit  
4 stating that because of his poverty, he cannot “pay or give security for the costs” of a suit. Id.

5 In this case, Plaintiff declares that he is unable to pay the filing fee for this action. Plaintiff  
6 currently has two jobs in which he earns a gross monthly salary of \$2,867. He also has \$250 in his  
7 bank account, a car, a home worth \$450,000, and household assets worth \$5,000. The Court finds  
8 that Plaintiff has sufficient income and assets to pay for the cost of suit.

9 Accordingly, the Court DENIES Plaintiff’s Application to Proceed in Forma Pauperis.  
10 Plaintiff shall pay the filing fee as required by the Clerk of Court and serve all Defendants pursuant  
11 to Rule 4(m) of the Fed. R. Civ. P.

12  
13 Dated: May 30, 2008

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Larry L. Harris  
3 63 Foss Avenue #3  
4 San Jose, Ca 95116

4 **Dated: May 30, 2008**

**Richard W. Wieking, Clerk**

5  
6 **By: /s/ JW Chambers**

**Elizabeth Garcia**  
**Courtroom Deputy**

**United States District Court**

For the Northern District of California

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